

**PALM BEACH COUNTY
ADEQUATE PUBLIC FACILITIES ORDINANCE
ORDINANCE NO. 90- 10**

AN ORDINANCE TO BE KNOWN AS THE PALM BEACH COUNTY ADEQUATE PUBLIC FACILITIES ORDINANCE; PROVIDING FOR SHORT TITLE, AUTHORITY AND APPLICABILITY; PROVIDING FOR INTENT AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR RULES OF CONSTRUCTION; PROVIDING GENERAL REQUIREMENT THAT ADEQUATE PUBLIC FACILITIES BE AVAILABLE CONCURRENT WITH DEVELOPMENT; PROVIDING MANAGEMENT AND MONITORING PROGRAM, ANNUAL PUBLIC FACILITIES UPDATE REPORT, CIE AMENDMENT, ANNUAL BUDGET; PROVIDING THE REGULATORY PROGRAM TO ENSURE ADEQUATE PUBLIC FACILITIES ARE AVAILABLE; PROVIDING FOR ENTITLEMENT DENSITY; PROVIDING FOR LIBERAL CONSTRUCTION, SEVERABILITY, AND PENALTIES; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Palm Beach County, pursuant to Sec. 163.3161, et. seq., Fla. Stat., the Florida Local Government Comprehensive Planning and Land Development Regulation Act (hereinafter "the Act"), prepared and adopted a Comprehensive Plan; and

WHEREAS, as part of that Comprehensive Plan, the County prepared and adopted a Capital Improvement Element (CIE) which covers at least a five (5) year period that considers the need for and location of Public Facilities; and

WHEREAS, the CIE is required to:

- A. establish a level of service (LOS) to determine the adequacy of Public Facilities; and
- B. based upon the established LOS, estimate Public Facility needs both to correct existing deficiencies and accommodate needs projected by new growth and development; and
- C. based on Public Facility needs, project costs to provide the necessary Public Facilities and find realistic revenue sources to fund the Public Facilities; and

WHEREAS, the Comprehensive Plan with the CIE is designed to ensure that adequate Public Facilities are available concurrent with the impact of development; and

WHEREAS, the Act mandates that Palm Beach County adopt land development regulations that implement the Comprehensive Plan; and

WHEREAS, Sec. 163.3177(10)(h), Fla. Stat., provides that Public Facilities and services needed to support development must be available concurrent with the impacts of such development; and

WHEREAS, Sec. 163.3202(2)(g), Fla. Stat., also provides that not later than one (1) year after its due date established by the State land planning agency's rule for submission of local comprehensive plans, a local government shall not issue a development order or permit when public facilities are not available to accommodate the impacts from proposed development at the adopted LOS identified in the CIE, or would result in a reduction in the LOS for the affected Public Facilities below the LOS provided in the Comprehensive Plan and CIE; and

WHEREAS, Rule 9J-5.005(2), Florida Administrative Code (F.A.C.) requires that a concurrency management system must be implemented after adoption of a Comprehensive Plan with its CIE to ensure that Public Facilities and services needed to support development are available concurrent with the impacts of such development; and

WHEREAS, on August 31, 1989, Palm Beach County adopted the Palm Beach County Comprehensive Plan including a CIE pursuant to the requirements of Sec. 163.3161 et. seq., Fla. Stat.; and

WHEREAS, it is the intent of the Board of County Commissioners of Palm Beach County to implement the "concurrency requirements" of the Palm Beach County Comprehensive Plan, in accordance with Secs. 163.3177(10)(h) and 163.3202(2)(g), Fla. Stats., and Rule 9J-5.005, F.A.C.;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF Palm Beach COUNTY, THAT:

I.

SHORT TITLE, AUTHORITY AND APPLICATION

A. **Short Title.** This Ordinance shall be known and may be cited as the "Palm Beach County Adequate Public Facilities Ordinance."

B. **Authority.** The Board of County Commissioners of Palm Beach County has the authority to adopt this Ordinance pursuant to Art. VIII, Sec. 1(f), Fla. Const., the Palm Beach County Charter, Sec. 125.01 et. seq., Fla. Stat., Sec. 163.3161(8), Fla. Stat., Secs. 163.3177(10)(h) and 163.3202(2)(g), Fla. Stat., and Rule 9J-5, F.A.C.

C. **Application.** This Ordinance shall apply to all development in the total unincorporated area of Palm Beach County.

II.

INTENT AND PURPOSE

A. **Implementation of Comprehensive Plan.** This Ordinance is intended to implement and be consistent with the Palm Beach County Comprehensive Plan, Sec. 163.3161 et. seq., Fla. Stat., and Rule 9J-5, F.A.C., by ensuring that all development in unincorporated Palm Beach County is served by adequate Public Facilities.

B. **Establishment of Management/Monitoring and Regulatory Program.** This objective is accomplished by (1) establishing a management and monitoring system to evaluate and coordinate the timing and provision of the necessary Public Facilities to service development, and (2) by establishing a regulatory program that ensures that each Public Facility is available to serve development concurrent with the impacts of development on the Public Facilities, or that development orders are conditioned on the availability of Public Facilities to serve the development concurrent with the impacts of development on the Public Facilities.

C. **Minimum Requirements.** The provisions of this Ordinance in their interpretation and application are declared to be the minimum requirements necessary to accomplish the stated intent, purposes, and objectives of this Ordinance.

III. DEFINITIONS

A. **Adequate Public Facilities Determination** means a Determination approved by the Planning Director pursuant to the terms of this Ordinance that serves as a statement that based upon existing Public Facility capacity and planned Public Facility capacity, adequate Public Facilities are available to serve the development at the time of the approval of the Adequate Public Facilities Determination. An Adequate Public Facilities Determination shall only be valid for the life of the individual development for which it is approved, and shall in no way be considered a Certificate of Concurrency Reservation. No subdivision or plat, or building permit shall be issued to a development for which an Adequate Public Facilities Determination has been issued, without receipt of a Certificate of Concurrency Reservation.

B. **Application for Development Permit** means an application submitted to Palm Beach County requesting the approval of a Development Permit.

C. **Capital Drainage Facilities** means the planning of, engineering for, acquisition of land for, or the construction of drainage facilities necessary to meet the LOS for Capital Drainage Facilities.

D. **Capital Fire-Rescue Facilities** mean the planning, engineering for, acquisition of land for, or the construction of fire-rescue facilities and the purchase of equipment necessary to meet the LOS for Capital Fire-Rescue Facilities.

E. **Capital Improvement Element** means the Capital Improvement Element of the Palm Beach County Comprehensive Plan.

F. **Capital Mass Transit Facilities** mean the planning of, engineering for, acquisition of land for, or the construction of or purchase of mass transit facilities and equipment necessary to meet the LOS for Capital Mass Transit Facilities.

G. **Capital Recreation and Park Facilities** mean the planning of, engineering for, acquisition of land for, or construction of buildings and park equipment necessary to meet the LOS for Urban Capital Park and Recreation Facilities and Rural Capital Park and Recreation Facilities.

H. **Capital Road Facilities** mean the planning of, engineering for, acquisition of land for, or construction of roads on the Major Road Network System necessary to meet the LOS for Capital Road Facilities.

I. **Capital Potable Water Facilities** mean the planning of, engineering for, acquisition of land for, or construction of potable water facilities necessary to meet the LOS for Capital Potable Water Facilities.

J. **Capital Sanitary Sewer Facilities** mean the planning of, engineering for, acquisition of land for, or construction of sanitary sewer facilities necessary to meet the LOS for Capital Sanitary Sewer Facilities.

K. **Capital Solid Waste Facilities** mean the planning of, engineering for, acquisition of land for, or construction of solid waste facilities necessary to meet the LOS for Capital Solid Waste Facilities.

L. **Certificate of Concurrency Reservation** means a Certificate approved by the Planning Director pursuant to the terms of this Ordinance that constitutes proof of adequate Public Facilities to serve the proposed development. A subsequent Application for a Development Permit for development for which a Certificate of Concurrency Reservation has been approved, shall be determined to have adequate Public Facilities as long as the development order for which the Certificate of Concurrency Reservation was approved has not expired, and the development is not altered to increase the impact of development on Public Facilities.

M. Comprehensive Plan means the Palm Beach County Comprehensive Plan, as amended, where referenced in this Ordinance.

N. Conditional Certificate of Concurrency Reservation means an application for a Certificate of Concurrency Reservation considered in conjunction with a Development Agreement that is approved by the Planning Director, if it is demonstrated that (a) all existing available Public Facility capacity up to but not greater than an amount sufficient to serve the proposed development has been reserved; (b) there is reasonable likelihood that the balance of the Public Facility capacity needed for the proposed development can be provided pursuant to a Development Agreement; and (c) a request has been made for consideration and approval of a Development Agreement concurrent with the Application for Development Permit so that the proposed development will comply with the Adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6.

O. Developer means any person, including a governmental agency, undertaking any development as defined in this Ordinance.

P. Development has the meaning given it in Sec. 380.04, Fla. Stat., except for the clearing of land or the deposit of refuse, solid or liquid waste, except when a development order is required.

Q. Development Agreement means an agreement entered into between a local government and a person associated with the development of land, including but not limited to Development Agreements pursuant to Sec. 163.3220, Fla. Stat., or an agreement on a development order issued pursuant to Sec. 380.01 et. seq., Fla. Stat.

R. Development Order means any order granting or granting with conditions an application for a development permit.

S. Development Permit includes any rezoning, special exception, special permit, site plan, subdivision plat, building permit, or any other official action of Palm Beach County having the effect of permitting the development of land.

T. Level of Service (LOS) means an indicator of the extent or degree of service provided by, or proposed to be provided by a Public Facility based on and related to the operational characteristics of the Public Facility.

U. LOS for Urban Service Area means the LOS established for those areas identified as the Urban Service Area in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

V. LOS for Rural Service Area means the LOS established for the areas identified as the Rural Service Area in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

W. LOS for Urban Capital Park and Recreation Facilities means the following for park lands and facilities. For park lands: 4.37 acres of acquired park land and 1.37 acres of developed park land per 1,000 persons for regional park land; 1.25 acres of acquired park land and .67 acres of developed park land per 1,000 persons for district park land; .37 acres of acquired park land and .23 acres of developed park land per 1,000 persons for community park land; and .35 acres of acquired park land and .23 acres of developed park land per 1,000 persons for beach park land.

The boundaries for the Urban Park and Recreation facilities are the boundaries for the Urban Service Area, as identified in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

Pursuant to the Palm Beach County Comprehensive Plan, these represent interim standards for LOS for Urban Capital Park and Recreation Facilities, which may be modified by the County.

In determining the LOS for Urban Capital Park and Recreation Facilities, park lands and facilities in both the Urban Service Area and Rural Service Area shall be considered.

The following Applications for Development Permits are exempt from the LOS for Urban Capital Park and Recreation Facilities: (1) alterations or expansions of an existing dwelling unit where no additional dwelling units are created; (2) construction of accessory buildings or structures that will not create additional dwelling units; (3) the replacement of an existing dwelling unit, where no additional dwelling units are created; (4) the issuance of a tie-down permit on a Mobile Home on which applicable park impact assessment fees have previously been paid; and (5) all non-residential development.

X. LOS for Rural Capital Park and Recreation Facilities means the following for park lands and facilities. For park lands: 4.37 acres of acquired park land and 1.37 acres of developed park land per 1,000 persons for regional park land; 1.25 acres of acquired park land and .67 acres of developed park land per 1,000 persons for district park land; and .35 acres of acquired park land and .23 acres of developed park land per 1,000 persons for beach park land.

The boundaries for the Rural Park and Recreation Facilities are the boundaries for the Rural Service Area, as identified in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

Pursuant to the Palm Beach County Comprehensive Plan, those represent interim standards for LOS for Rural Capital Park and Recreation Facilities, which may be modified by the County.

In determining the LOS for Rural Capital Park and Recreation Facilities, park lands and facilities in both the Rural Service Area and Urban Service Area shall be considered.

The following Application for Development Permits are exempt from the LOS for Rural Capital Park and Recreation Facilities: (1) alterations or expansions of an existing dwelling unit where no additional dwelling units are created; (2) construction of accessory buildings or structures that will not create additional dwelling units; (3) the replacement of an existing dwelling unit, where no additional dwelling units are created; (4) the issuance of a tie-down permit on a Mobile Home on which applicable park impact assessment fees have previously been paid; and (5) all non-residential development.

Y. LOS for Urban Capital Potable Water Facilities means the following, based upon the potable water service area where the development is located.

1. **Palm Beach County Water Utilities Service Area.** The LOS in the Palm Beach County Water Utilities Service Area is 195 gallons per capita per day (g.p.c.d.) for general residential consumption.

2. **Seacoast Service Area.** The LOS in the Seacoast Service Area is 110 g.p.c.d. for general residential consumption.

3. **Acme Service Area.** The LOS in the Acme Service Area is 207 g.p.c.d. for general residential consumption.

4. **Jupiter Service Area.** The LOS in the Jupiter Service Area is 350 gallons per dwelling unit per day for general residential consumption.

5. **City of Riviera Beach Service Area.** The LOS in the City of Riviera Beach Service Area is 177 g.p.c.d. for general residential consumption.

6. **Village of Palm Springs Service Area.** The LOS in the Village of Palm Springs Service Area is 194 g.p.c.d. peak and 121 g.p.c.d. average, for general residential consumption.

7. **City of Boynton Beach Service Area.** The LOS in the City of Boynton Beach Service Area is 200 g.p.c.d. for general residential consumption.

8. **City of Delray Beach Service Area.** The LOS in the City of Delray Beach Service Area is 263 g.p.c.d. peak and 195 g.p.c.d. average, for general residential consumption.

9. **City of Boca Raton Service Area.** The LOS in the City of Boca Raton Service Area is 387 g.p.c.d. for general residential consumption.

10. **Village of Royal Palm Beach Service Area.** The LOS in the Village of Royal Palm Service Area is 135 g.p.c.d. for general residential consumption.

11. **City of Belle Glade Service Area.** The LOS in the City of Belle Glade Service Area is 91 g.p.c.d. for general residential consumption.

12. **City of Pahokee Service Area.** The LOS in the City of Pahokee Service Area is 93 g.p.c.d. for general residential consumption.

13. **City of South Bay Service Area.** The LOS in the City of South Bay Service Area is 174 g.p.c.d. for general residential consumption.

The only exception to the LOS for Urban Capital Potable Water Facilities in the Urban Service Area is that the minimum LOS for Urban Potable Water Facilities for single lots of record which represent infill development and are grandfathered pursuant to E.C.R. Rule I, Section 8, Subdivision 15, is a waterwell permitted in accordance with State and local regulations, as administered by the Palm Beach County Health Unit.

Z. LOS for Rural Capital Potable Water Facilities means an on site potable water well permitted and operated in conformance with State and County regulations. There shall be no minimum LOS for fire flow for Rural Potable Water Facilities. The Rural Service Area for Rural Capital Potable Water Facilities is identified in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

AA. LOS for Capital Road Facilities means the LOS for Capital Road Facilities as set forth in the most current Traffic Performance Standard Code of Palm Beach County, Florida.

AB. LOS for Capital Mass Transit Facilities means that development orders shall not cause Palm Beach County's total mass transit capacity to fall below that which can accommodate three quarters of one percent (75%) of the total County transportation trips.

AC. LOS for Urban Capital Sanitary Sewer Facilities means the following, based upon the Sanitary Sewer Service Area where the development is located.

LOS for Urban Sanitary Sewer Areas

| | Minimum Wastewater Capacity (per capita per day) | Disposal of Effluent | Disposal of Sludge |
|---|--|----------------------------|--------------------------|
| 1. Palm Beach County Water Utilities Service Area | central region 92 gallons southern region 120 gallons | *1 | *2 |
| 2. City of Boca Raton Service Area | 147 gallons | *1 | *2 |
| 3. City of Delray Beach Service Area | 117 gallons | *1 | *2 |
| 4. City of Boynton Beach Service Area | 90 gallons | *1 | *2 |
| 5. City of Riviera Beach Service Area | 135 gallons | *1 | *2 |
| 6. Village of Royal Palm Beach Service Area | 85 gallons | *1 | *2 |
| 7. Village of Palm Springs/ Lake Worth Service Area | 75 gallons | *1 | *2 |
| 8. City of Belle Glade Service Area | 101 gallons | *1 | *2 |
| 9. City of Pahokee Service Area | 100 gallons | *1 | *2 |
| 10. City of South Bay Service Area | 163 gallons | *1 | *2 |
| 11. Encon Service Area | 85 gallons | *1 | *3 |
| 12. Seacoast Service Area | 91 gallons | *1 | *3 |
| 13. Acme Service Area | 70 gallons | *1 | *3 |

*1) As required by EPA and DER regulations

*2) As required by DER and Solid Waste Authority

*3) As required by DER regulations

The minimum LOS for Urban Sanitary Sewer Facilities for single lots of record in the Urban Service Area which represent infill development and are grandfathered pursuant to ECR Rule I, Sec. 8, Subdivision 15, is a septic tank permitted in accordance with State and local regulations as administered by the Palm Beach County Public Health Unit.

AD. LOS for Rural Capital Sanitary Sewer Facilities means a septic tank permitted and operated in conformance with State and County regulations as administered by the Palm Beach County Public Health Unit. The Rural Service Area is identified in the Future Land Use Atlas of the Palm Beach County Comprehensive Plan.

AE. LOS for Capital Solid Waste Facilities means sufficient capital solid waste disposal facilities to dispose of 7.1 pounds of solid waste per capita per day.

AF. LOS for Capital Fire-Rescue Facilities means that all properties in the Coastal Municipal Services Taxing Unit(s) shall be provided fire services that have an aggregate response time of five (5) minutes.

AG. LOS for Capital Drainage Facilities means facilities adequate to handle the following storm flows.

| <u>DEVELOPMENT FEATURE</u> | <u>LEVEL OF SERVICE</u> |
|--|---|
| o Lowest habitable space of residential and commercial buildings. | Inundation elevation resulting from 100-year, 3-day rainfall, assuming zero discharge; or 100-year flood elevation per F.E.M.A. Flood Insurance Rate Maps; or 100-year flood elevation as established by SFWMD rule, whichever is more restrictive. |
| o Residential Subdivision Lots with gross area one-quarter acre or less. (1)(2) | 3-year, 24-hour rainfall. |
| o Residential Subdivision lots with gross area greater than one-quarter acre. | |
| (a) within 20 feet of habitable building. | (a) 3-year, 24-hour rainfall. |
| (b) remainder of lot except areas designated for stormwater management purposes. | (b) duration of inundation not to exceed 8 hours subsequent to 3-year, 24-hour rainfall. |
| o Local Streets. (1)(2) | 3-year, 24-hour rainfall. |
| o Collector Streets not included in Thoroughfare Plan. (1)(2) | 5-year, 24-hour rainfall. |
| o Thoroughfare Plan Streets. | In accordance with applicable requirements, pursuant to FDOT Drainage Manual. |
| o Residential Parking Lots. (1)(2) | 3-year, 24-hour rainfall (5-year, 24-hour rainfall when exfiltration trench system used.) |
| o Commercial Parking Lots. (1)(2) | 3-year, 24-hour rainfall (5-year, 24-hour rainfall when exfiltration trench system used.) |
| o Recreation and Open Space Areas not specifically designated for stormwater management purposes. | Duration of inundation not to exceed 8 hours following 3-year, 24-hour rainfall. |
| (1) Hydraulic capacity design of related storm water discharge facilities is to be based on peak runoff rates produced by rainfall intensities for applicable return periods in accordance with intensity versus duration curves for FDOT-Zone 10. | |
| (2) Tailwater elevations for design of related storm sewerage shall be based on peak receiving water elevations determined for the noted return period and duration. | |

AF. Major Road Network System means all expressway, arterial, and collector roads under the jurisdiction of Palm Beach County, and State and Federal roadways within Palm Beach County.

AG. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.

AH. Public Facilities mean capital drainage facilities, capital park and recreation facilities, capital potable water facilities, capital road facilities, capital sanitary sewer facilities, capital solid waste facilities, capital mass transit facilities, and capital fire-rescue facilities.

IV. RULES OF CONSTRUCTION

In the construction of this Ordinance, the rules set out in Chapter I, Section 1-2 (Rules of Construction and Definition) of the Palm Beach County Code of Laws and Ordinances shall be observed unless such construction is inconsistent with the manifest intent of the Palm Beach County Comprehensive Plan.

V. ADEQUATE PUBLIC FACILITIES SHALL BE AVAILABLE TO SERVICE DEVELOPMENT

In order to implement the provisions of the Palm Beach County Comprehensive Plan to ensure that adequate Potable Water, Sanitary Sewer, Solid Waste, Drainage, Park, Road, Mass Transit, and Fire-Rescue Public Facilities are available to accommodate development in Palm Beach County concurrent with the impacts of development on such Public Facilities, the Board of County Commissioners establishes, pursuant to the terms of this Ordinance, (1) a management and monitoring program that evaluates the conditions of Public Facilities to ensure they are being adequately planned for and funded to maintain the LOS for each Public Facility, and (2) a regulatory program that ensures that each Public Facility is available to serve development concurrent with the impacts of development on such Public Facilities, or that development orders are conditioned on the availability of Public Facilities to serve the development concurrent with the impacts of development.

VI. MANAGEMENT AND MONITORING PROGRAM: THE ANNUAL PUBLIC FACILITIES UPDATE REPORT, CIE AMENDMENTS, THE ANNUAL BUDGET

A. General. In order to ensure that adequate Potable Water, Sanitary Sewer, Solid Waste, Drainage, Park, Road, Mass Transit, and Fire-Rescue Public Facilities are available concurrent with the impacts of development on the Public Facilities, the County shall establish the following management and monitoring practices. Their purpose is to evaluate and coordinate the timing, provision, and funding of Potable Water, Sanitary Sewer, Solid Waste, Drainage, Park and Recreation, Road, Mass Transit, and Fire-Rescue Public Facilities so that (1) they are being adequately planned for and funded to maintain the LOS for the Public Facilities and (2) to evaluate the capacity of the Public Facilities for use in the regulatory program to ensure (a) there are no development orders issued unless there are adequate Public Facilities available to serve the development concurrent with the impacts of development on the Public Facilities, or (b) no development orders are issued unless they are conditioned on the availability of Public Facilities to serve the development concurrent with the impacts of development on the Public Facilities.

B. Annual Public Facilities Update Report (AUR). By March 1 of each year, beginning in 1991, the Executive Director of the Department of Planning, Zoning and Building shall complete and submit to the Office of Management and Budget (OFMB) an Annual Public Facilities Update Report (hereinafter "AUR"). The AUR shall determine the existing conditions of all Potable Water, Sanitary Sewer, Solid Waste, Drainage,

Park, Road, Mass Transit, and Fire-Rescue Public Facilities, determine and summarize the available capacity of these Public Facilities based on their LOS, and forecast the capacity of existing and planned Capital Improvements identified in the Five (5) Year Capital Improvement Schedule for each of the five (5) succeeding years. The forecasts shall be based on the most recently updated schedule of Capital Improvements for each Public Facility. The AUR shall also revise relevant population projections, update Public Facility inventories, update unit costs, and update revenue forecasts.

The findings of the AUR shall be fully considered in preparing any proposed amendments to the CIE, any proposed amendments to the County's annual budget for Public Facilities, and the review of and issuance of development orders during the next year.

C. Recommendations on Amendments to CIE and Annual Budget

Based upon analysis of the AUR, OFMB shall propose to the Board of County Commissioners each year, any necessary amendments to the CIE, and any proposed amendments to the County's annual budget for Public Facilities.

**VII.
THE REGULATORY PROGRAM: REVIEW OF
DEVELOPMENT TO ENSURE ADEQUATE PUBLIC
FACILITIES ARE AVAILABLE**

A. General. In order to ensure that adequate Potable Water, Sanitary Sewer, Solid Waste, Drainage, Park and Recreation, Road, Mass Transit, and Fire-Rescue Public Facilities are available concurrent with the impacts of development on each Public Facility, Palm Beach County shall establish the following development review procedures to ensure there is no development order issued unless there are adequate Public Facilities available to serve the proposed development, or that the development order is conditioned on the availability of Public Facilities to serve the development concurrent with the impacts of development on the Public Facilities.

B. Exemptions.

The following development shall be exempt from the requirements of this Ordinance.

1. All development that has received a Concurrency Exemption Determination, pursuant to the "Concurrency Exemption Ordinance of Palm Beach County;"
2. Construction of Public Facilities that are identified in the Capital Improvement Element of the Palm Beach County Comprehensive Plan;
3. An alteration or expansion of a development that does not create additional impact on Public Facilities;
4. The construction of accessory buildings and structures that does not create additional impact on Public Facilities; and
5. The replacement of an existing dwelling unit when no additional dwelling units are created.

C. Review to Determine Public Facility Adequacy.

1. **General.** After the effective date of this Ordinance, no Application for a Development Permit shall be accepted without receipt of either a Concurrency Exemption Determination, an Adequate Public Facilities Determination, a Certificate of Concurrency Reservation, a Conditional Certificate of Concurrency Reservation, or Entitlement Density. The applicant may elect whether to gain approval of an Adequate Public Facilities Determination, a Certificate of Concurrency Reservation, or a Conditional Certificate of Concurrency Reservation pursuant to the terms of this Ordinance, except that no

Application for a Development Permit for subdivision or plat, or building permit, shall be accepted without receipt of a Certificate of Concurrency Reservation.

2. Rules of General Applicability.

a. **Timing.** An Application for an Adequate Public Facilities Determination or a Certificate of Concurrency Reservation may be submitted at any time during the year.

b. **Assignability and Transferability.** A Certificate of Concurrency Reservation shall be assignable within a proposed development, but shall not be assignable or transferable to other development.

c. **Expiration Prior to Receipt of Development Order.** An Adequate Public Facilities Determination shall expire after three (3) months if an Application for a Development Permit is not submitted for the proposed development for which the Adequate Public Facilities Determination has been approved. A Certificate of Concurrency Reservation shall expire after one (1) year if a development order is not issued for the development for which the Certificate was approved. A Conditional Certificate of Concurrency Reservation shall expire after one (1) year if the Development Agreement and the Application for Development Permit for which it has been approved, is not reviewed and approved.

d. **Phasing.** In determining whether an Application for Certificate of Concurrency Reservation complies with the requirements of Sec. VII.C.6, the Planning Director may consider the phasing of development and its coordination with Public Facility Capital Improvements for a period of up to five (5) years, or some other period consistent with the terms of a Development Agreement.

e. **Expiration and Effect.**

(1) **Adequate Public Facilities Determination.** An Adequate Public Facilities Determination is initially valid for three (3) months during which time an Application for Development Permit must be submitted for the proposed development for which the Determination was approved. If a development order is approved, the Adequate Public Facilities Determination is valid for the life of that initial development order. Each subsequent Application for a Development Permit (except those developments exempted pursuant to Sec. VII.B.) for the development shall be required to receive a new Adequate Public Facilities Determination, a Certificate of Concurrency Reservation, or a Conditional Certificate of Concurrency Reservation, whichever is appropriate. An Adequate Public Facilities Determination shall only be valid for the life of the individual development order for which it is approved, and shall in no way be considered a Certificate of Concurrency Reservation. No subdivision or plat, or building permit shall be issued to a development for which an Adequate Public Facilities Determination has been issued, without receipt of a Certificate of Concurrency Reservation.

(2) **Certificate of Concurrency Reservation.** A Certificate of Concurrency Reservation is initially valid for one (1) year during which time a development order must be issued for the development for which the Certificate was approved. If a development order is approved for the Certificate during that first year, the Certificate of Concurrency Reservation is valid for the life of the development order for which it is originally approved. The Certificate of Concurrency Reservation is then valid for the life of subsequent development orders for the same development, if the subsequent development orders are approved prior to the expiration of the earlier development order for the development, and the development is not altered to increase the impact of the development on Public Facilities. The expiration of a development order shall result in the expiration of the Certificate of Concurrency Reservation.

(3) **Conditional Certificate of Concurrency Reservation.** An application for a Certificate of Concurrency Reservation considered in conjunction with a Development Agreement, may be conditionally approved as a Conditional Certificate of Concurrency Reservation if (a) all existing Public Facility capacity up to but not greater than the amount sufficient to serve the development

has been reserved; (b) there is reasonable likelihood that the balance of the Public Facility Capital Improvements identified to provide the remaining capacity needed for the proposed development can be provided pursuant to a Development Agreement; and (c) a request has been made for consideration and approval of a Development Agreement concurrent with the Application for Development Permit to ensure the proposed development complies with the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6. Prior to the review Board consideration of the Development Agreement in conjunction with the Development Application, the Planning Director shall review that component of the Development Agreement related to the provision of adequate Public Facilities for the proposed development and determine if through prior reservation of Public Facility capacity and the terms of the proposed Development Agreement, the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6 are met if the terms of the Development Agreement are approved. If the Planning Director determines that the standards of Sec. VII.C.6 are met if the Development Agreement is approved, a Certificate of Concurrency Reservation shall be issued, conditioned on the approval of the Development Agreement with the express terms related to the provision of the Public Facilities for the proposed development. Upon approval of the Development Agreement consistent with the terms and conditions which the Planning Director determined would ensure compliance with the requirements of Sec. VII.C.6, the Certificate of Concurrency Reservation shall become final. A Certificate of Concurrency Reservation is valid for the life of the development order for which it is approved. The Certificate of Concurrency Reservation is then valid for the life of subsequent development orders for the same development, if the subsequent development orders are approved prior to the expiration of the earlier development order for the project, and the development order is not altered to increase the impact of the development on Public Facilities. The expiration of the development order shall result in the expiration of the Certificate of Concurrency Reservation. If the Development Agreement upon which a Certificate of Concurrency Reservation is conditionally issued is denied, then the Certificate of Concurrency Reservation shall expire.

f. Effect.

(1) Adequate Public Facilities Determination. An Adequate Public Facilities Determination shall serve as a statement that based upon existing Public Facility capacity and planned Public Facility capacity, adequate Public Facilities are available to serve the development at the time of the approval of the Adequate Public Facilities Determination. A subsequent Application for a Development Permit for development that has been approved based upon an Adequate Public Facilities Determination shall be required to receive a new Adequate Public Facilities Determination or Certificate of Concurrency Reservation, whichever is appropriate. An Adequate Public Facilities Determination shall only be valid for the life of the individual development order for which it is approved, and shall in no way be considered a Certificate of Concurrency Reservation. No subdivision or plat, or building permit shall be issued to a development for which an Adequate Public Facilities Determination has been issued, without receipt of a Concurrency Reservation.

(2) Certificate of Concurrency Reservation. Receipt of a Certificate of Concurrency Reservation shall constitute proof of adequate Public Facilities to serve the proposed development. A subsequent Application for a Development Permit for development for which a Certificate of Concurrency Reservation has been approved, shall be determined to have adequate Public Facilities as long as the development order for which the Certificate of Concurrency Reservation was approved has not expired, and the development is not altered to increase the impact of the development on Public Facilities.

(3) Conditional Certificate of Concurrency Reservation. Receipt of a Conditional Certificate of Concurrency Reservation is a statement that an application for a Certificate of Concurrency Reservation considered in conjunction with a Development Agreement, has been conditionally approved by the Planning Director because it is demonstrated that (a) all existing available Public Facility capacity up to but not greater than an amount sufficient to serve the proposed development has been reserved; (b) there is reasonable likelihood that the balance of the Public Facility Capital Improvements identified to provide the remaining capacity needed for the proposed development can be provided pursuant to a Development Agreement; and (c) a request has been made for the consideration and approval of a

Development Agreement concurrent with the Application for Development Permit to ensure compliance with the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6. Prior to the review Board's consideration of the Development Agreement in conjunction with the Development Application, the Planning Director shall review that component of the Development Agreement related to the provision of adequate Public Facilities for the proposed development, and determine if through prior reservation of Public Facility capacity and the terms of the proposed Development Agreement, the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6 are met if the terms of the Development Agreement are approved. If the Planning Director determines that the standards of Sec. VII.C.6 are met if the Development Agreement is approved, a Certificate of Concurrency Reservation shall be issued, conditioned on the approval of the Development Agreement with the express terms related to the provision of the Public Facilities for the proposed development. Upon approval of the Development Agreement consistent with the terms and conditions which the Planning Director determined would ensure compliance with the requirements of Sec. VII.C.6, the Certificate of Concurrency Reservation shall become final. A Certificate of Concurrency Reservation is valid for the life of the development order for which it is approved. The Certificate of Concurrency Reservation is then valid for the life of subsequent development orders for the same development, if the subsequent development orders are approved prior to the expiration of the earlier development order for the project, and the development order is not altered to increase the impact of the development on Public Facilities. The expiration of the development order shall result in the expiration of the Certificate of Concurrency Reservation. If the Development Agreement upon which the Certificate of Concurrency Reservation is conditionally issued is denied, then the Certificate of Concurrency Reservation shall expire.

g. Amendment of Certificate of Concurrency Reservation. An amendment to a Certificate of Concurrency Reservation shall be required prior to the approval of any amendment to a development order for which a Certificate of Concurrency Reservation has been approved if the amendment increases or decreases the need for capacity for any Public Facility (Potable Water, Sanitary Sewer, Solid Waste, Drainage, Parks and Recreation, Roads, Mass Transit, and Fire-Rescue). The amendment of a Certificate of Concurrency Reservation shall only require evaluation and reservation of the additional Public Facility capacity demanded by the proposed development or evaluation and modification of the reservation of the Public Facility capacity if the demand is decreased. An amendment shall be required if there is a decrease in the density or intensity of development approved in a development order. Any amendment to a development order for which an Adequate Public Facilities Determination has been approved shall require a new Adequate Public Facilities Determination or a Certificate of Concurrency Reservation, whichever is appropriate.

3. Effect of Development Agreement in Conjunction with a Certificate of Concurrency Reservation. A developer may enter into a Development Agreement with Palm Beach County, for those Public Facilities specifying that a Development Agreement is acceptable, in conjunction with the approval of a development order and a Certificate of Concurrency Reservation or a Conditional Certificate of Concurrency Reservation, to ensure adequate Public Facilities are available concurrent with the impacts of development on the Public Facility. The effect of the Development Agreement shall be to bind Palm Beach County and the developer pursuant to the terms and duration of the Development Agreement to its determination pursuant to Section VII.C. that adequate Public Facilities are available to serve the proposed development concurrent with the impacts of the development on the Public Facilities. Any Public Facility Capital Improvement in the Five (5) Year Schedule of Capital Improvements in the CIE on which such a Certificate of Concurrency Reservation is made in conjunction with the approval of a development order and a Development Agreement, shall not be delayed, deferred, or removed from the Five (5) Year Schedule of Improvements in the CIE, except that any Capital Improvement may be deferred by one (1) year if the deferral is identified pursuant to the terms of a Development Agreement.

4. Procedure for Review of Application

a. Submission of Application. An Application for either an Adequate Public Facilities Determination or a Certificate of Concurrency Reservation shall be submitted at any time during the year, to the Planning Director in a form established by the Planning Director and made available to the public.

b. Determination of Completeness and Review.

(1) **Determination of Completeness.** The Planning Director shall initiate review of an Application for an Adequate Public Facilities Determination or an Application for Certificate of Concurrency Reservation upon receipt of the application, and determine whether the application is complete and includes data necessary to evaluate the application within fifteen (15) days. If it is determined that the application is not complete, written notice shall be served on the applicant specifying the deficiencies. The Planning Director shall take no further action on the application unless the deficiencies are remedied.

(2) **Review and Recommendation of County Departments and Service Providers.** On the day the Planning Director determines the application is complete, the application shall be forwarded to the County Departments and Service Providers for review. Within fifteen (15) days of its receipt, the County Departments and Service Providers shall provide a statement as to whether or not adequate Public Facilities are available, pursuant to the standards of Sec. VII.C.5 or Sec. VII.C. 6, whichever is appropriate.

(3) **Decision by Planning Director.**

(a) **Adequate Public Facilities Determination.** Within ten (10) days receipt of a statement from the County Departments and Service Providers regarding an application for an Adequate Public Facilities Determination, the Planning Director shall review the statements and the application, and determine if it complies with all the Public Facility component standards of Sec. VII.C.5 . If the application complies with all of the Public Facility component standards in Sec. VII.C.5., the Planning Director shall issue an Adequate Public Facilities Determination .

(b) **Certificate of Concurrency Reservation.** Within ten (10) days of receipt of a statement from the County Departments and Service Providers regarding an Application for a Certificate of Concurrency Reservation, the Planning Director shall review the statements and the application, and determine if it complies with all the Public Facility component standards of Sec. VII.C.6. If the application complies with all of the Public Facility component standards of Sec. VII.C.6, the Planning Director shall issue a Certificate of Concurrency Reservation. If the Planning Director determines that an application fails to meet any one (1) of the Public Facility component standards of Sec. VII.C.6, the applicant shall be notified of such deficiency, and may either:

(1) **Certificate of Concurrency Reservation.** Remedy the application within ninety (90) days. If during the ninety (90) day period, the applicant resolves the deficiencies, the application shall be reconsidered by the Planning Director and approved or denied, consistent with the standards in Sec. VII.C.6.

(2) **Conditional Certificate of Concurrency Reservation.** Request approval of a Conditional Certificate of Concurrency Reservation. A Conditional Certificate of Concurrency Reservation shall be approved by the Planning Director if it is demonstrated that:

(i) All existing available Public Facility capacity up to but not greater than an amount sufficient to serve the proposed development has been reserved;

(ii) There is reasonable likelihood that the balance of the Public Facility Capital Improvements identified to provide the remaining capacity necessary to accommodate the proposed development can be provided pursuant to a Development Agreement;

(iii) The applicant requests consideration and approval of a Development Agreement concurrent with the Application for a Development Permit for which the Conditional Certificate of Concurrency Reservation is requested for the purpose of ensuring the Certificate complies with the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6 , and;

(iv) The Conditional Certificate of Concurrency Reservation is conditioned on the concurrent approval of a Development Agreement and a development order for the Application for Development Permit that complies with the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6.

Prior to the review Board's consideration of the Development Agreement in conjunction with the Development Application, the Planning Director shall review that component of the Development Agreement related to the provision of adequate Public Facilities for the proposed development and determine if through prior reservation of Public Facility capacity and the terms of the proposed Development Agreement, the adequate Public Facility standards for a Certificate of Concurrency Reservation in Sec. VII.C.6 are met if the terms of the Development Agreement are approved. If the Planning Director determines that the standards of Sec. VII.C.6 are met if the Development Agreement is approved, a Certificate of of Concurrency Reservation shall be issued, conditioned on the approval of the Development Agreement with the express terms related to the provision of the Public Facilities for the proposed development. Upon approval of the Development Agreement consistent with the terms and conditions which the Planning Director determined would ensure compliance with the requirements of Sec. VII.C.6, the Certificate of Concurrency Reservation shall become final. If the Development Agreement upon which the Certificate of Concurrency Reservation is conditionally issued is denied, then the Certificate of Concurrency Reservation shall expire.

c. Appeal.

1. **General.** An applicant may appeal a decision of the Planning Director denying an Application for a Certificate of Concurrency Reservation by filing a petition appealing the decision to the Concurrency Review Board within thirty (30) days of the decision of the Planning Director.

2. **Concurrency Review Board Membership.** The Concurrency Review Board shall consist of the Executive Director of the Department of Planning, Zoning and Building, the County Attorney and the County Engineer.

3. **Procedure.** The Concurrency Review Board shall consider the appeal petition within sixty (60) days of its filing. In considering the appeal, the Concurrency Review Board shall consider only the record before the Planning Director at the time of the decision, testimony of the petitioner and the petitioners' agents and testimony of County Department members and Service Providers.

4. **Standard.** The Concurrency Review Board shall reverse the decision of the Planning Director only if there is substantial competent evidence in the record that the application complies with the standards of Sec. of VII.C.6. In considering all appeals related to Road Facilities, the decision of the Traffic Performance Standards Review Board shall be binding.

5. **Standards for Review of Application for Adequate Public Facilities Determination.** The following standards shall be used in the determination of whether to issue or deny an Adequate Public Facilities Determination. Before issuance of an Adequate Public Facilities Determination, the application shall fulfill the standards for each Public Facility component (Potable Water, Sanitary Sewer, Solid Waste, Drainage, Parks and Recreation, Roads, Mass Transit, and Fire-Rescue).

(a) **Potable Water Facilities.** The Potable Water component shall be approved if any of the following conditions are met:

(1) Capital Potable Water Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities;

(2) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are under construction and bonded;

(3) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are the subject of a binding and executed contract; or

(4) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Water Facilities are included in the County's Capital Improvement Annual Budget.

(b) **Sanitary Sewer Facilities.** The Sanitary Sewer component shall be approved if any of the following conditions are met:

(1) Capital Sanitary Sewer Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities;

(2) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities are under construction and bonded;

(3) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities are the subject of a binding and executed contract; or

(4) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities are included in the County's Capital Improvement Annual Budget.

(c) **Solid Waste Facilities.** The Solid Waste component shall be approved if any of the following conditions are met:

(1) Capital Solid Waste Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities;

(2) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are under construction and bonded;

(3) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are the subject of a binding and executed contract; or

(4) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are included in the County's Capital Improvement Annual Budget.

(d) **Drainage Facilities.** The Drainage component shall be approved if the proposed development has access to a point of legal positive outfall.

(e) **Park and Recreation Facilities.** The Park and Recreation component shall be approved if any of the following conditions are met:

(1) Capital Park and Recreation Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities;

(2) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities are under construction and bonded;

(3) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities are the subject of a binding and executed contract; or

(4) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation facilities are included in the County's Capital Improvement Annual Budget.

(f) **Road Facilities.** The Road component shall be approved if the proposed development complies with the 1990 Traffic Performance Standards Code of Palm Beach County, Florida, and the LOS for Capital Road Facilities.

(g) **Mass Transit Facilities.** The Mass Transit component shall be approved if the travel demand of the proposed development does not deteriorate the LOS for Capital Mass Transit Facilities below the adopted LOS for Mass Transit Facilities.

(h) **Fire-Rescue Facilities.** The Fire-Rescue component shall be approved if any of the following conditions are met:

(1) Capital Fire-Rescue Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue Facilities;

(2) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue Facilities are under construction;

(3) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue Facilities are the subject of a binding and executed contract; or

(4) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue facilities are included in the County's Capital Improvement Annual Budget.

6. Standards for Review of Application for Certificate of Concurrency Reservation.

The following standards shall be used in the determination of whether to issue, issue with conditions, or deny a Certificate of Concurrency Reservation. Before issuance of a Certificate of Concurrency Reservation, the application shall fulfill the standards for each Public Facility component (Potable Water, Sanitary Sewer, Solid Waste, Drainage, Parks and Recreation, Roads, Mass Transit, and Fire-Rescue).

a. Potable Water Facilities.

The Potable Water component shall be approved if any of the following conditions are met:

(1) Capital Potable Water Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities, and a reservation of capacity has been received from the appropriate service provider;

(2) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are under construction and bonded, and a reservation of capacity has been received from the appropriate service provider;

(3) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are the subject of a binding executed contract, and a reservation of capacity has been received from the appropriate service provider;

(4) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are included in the County's Capital Improvement Annual Budget, and a reservation of capacity has been received from the appropriate service provider; or

(5) The Capital Potable Water Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities, are committed to be provided by the applicant pursuant to a Development Agreement.

b. Sanitary Sewer Facilities. The Sanitary Sewer component shall be approved if any of the following conditions are met:

(1) Capital Sanitary Sewer Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities, and a reservation of capacity has been received from the appropriate service provider;

(2) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities is under construction and bonded, and a reservation of capacity has been received from the appropriate service provider;

(3) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities are the subject of a binding and executed contract, and a reservation of capacity has been received from the appropriate service provider;

(4) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Sanitary Sewer Facilities are included in the County's Capital Improvement Annual Budget, and a reservation of capacity has been received from the appropriate service provider; or

(5) The Capital Sanitary Sewer Facilities that will provide the proposed development sufficient services based on the LOS for Capital Potable Water Facilities are committed to be provided by the applicant pursuant to a Development Agreement.

c. Solid Waste Facilities. The Solid Waste component shall be approved if any of the following conditions are met:

(1) Capital Solid Waste Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities;

(2) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are under construction and bonded;

(3) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are the subject of a binding and executed contract; or

(4) The Capital Solid Waste Facilities that will provide the proposed development sufficient services based on the LOS for Capital Solid Waste Facilities are included in the County's Capital Improvement Annual Budget.

d. **Drainage Facilities.** The Drainage component shall be approved if the proposed development has access to a point of legal positive outfall and provides means for connection of stormwater flow from the proposed development to a legal positive outfall .

e. **Park and Recreation Facilities.** The Park and Recreation component shall be approved if any of the following conditions are met.

(1) Capital Park and Recreation Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities, and a reservation of capacity has been provided for the facilities;

(2) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities are under construction and bonded, and a reservation of capacity has been provided for the facilities;

(3) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities are the subject of a binding and executed contract, and a reservation of capacity has been received from the appropriate service provider;

(4) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities are included in the County's Capital Improvement Annual Budget and a reservation of capacity has been received from the appropriate service provider; or

(5) The Capital Park and Recreation Facilities that will provide the proposed development sufficient services based on the LOS for Capital Park and Recreation Facilities shall be provided pursuant to the terms of a Development Agreement.

f. **Road Facilities.** The Road component shall be approved if the proposed development complies with the 1990 Traffic Performance Standards Code of Palm Beach County, Florida, and the LOS for Capital Road Facilities. In determining whether the road component meets the requirements of this subsection, the Five (5) Year Schedule of Improvements in the CIE may be considered only if the development proposed in the application is phased so that the impacts of the proposed development and the capacity provided by the road projects in the Five (5) Year Schedule of Improvements will occur concurrently. The phasing of development and transportation improvements to ensure the LOS for Capital Road Facilities is met may be addressed through a Development Agreement.

g. **Mass Transit Facilities.** The Mass Transit component shall be approved if the travel demand of the proposed development does not deteriorate the LOS for Capital Mass Transit Facilities below the adopted LOS for Mass Transit Facilities, and a reservation of capacity has been provided from the County.

h. **Fire-Rescue Facilities.** The Fire-Rescue component shall be approved if any of the following conditions are met:

(1) Capital Fire-Rescue Facilities are in place to provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue Facilities, and a reservation of capacity is received from the service provider;

(2) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire-Rescue Facilities are under construction and bonded, and a reservation of capacity is received from the appropriate service provider;

(3) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire Rescue Facilities are the subject of a binding and executed contract, and a reservation of capacity has been received from the appropriate service provider;

(4) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire Rescue Facilities are included in the County's Capital Improvement Annual Budget, and a reservation of capacity has been received from the service provider; or

(5) The Capital Fire-Rescue Facilities that will provide the proposed development sufficient services based on the LOS for Capital Fire Facilities are provided pursuant to a Development Agreement.

VIII. **ENTITLEMENT DENSITY**

If after an appeal pursuant to Sec. VII.C.4.c., an Application for a Certificate of Concurrency Reservation is denied by the Planning Director and that decision is affirmed by the Concurrency Review Board, the applicant may submit an Application for Entitlement Density pursuant to the procedural and substantive requirements of this section.

A. **Submission of application.** An Application for Entitlement Density shall be submitted to the Planning Director on a form established by the Planning Director and made available to the public.

B. **Determination of completeness and review.** After receipt of an Application for Entitlement Density, the Planning Director shall determine whether it is complete within fifteen (15) days. If it is determined the application is not complete, written notice shall be served on the applicant specifying the deficiencies. The Planning Director shall take no further action on the application until the deficiencies are remedied.

C. **Decision by Planning Director.** When the Planning Director determines the application is complete, the Planning Director shall review the application and shall approve, approve with conditions, or deny the application based upon whether it complies with the standards in Sec. VIII.D.

D. **Standards for Entitlement Density.** An entitlement density for the proposed development shall be granted consistent with the entitlement densities permitted in the Land Use Element of the Palm Beach County Comprehensive Plan or a minimum of one (1) dwelling unit provided that the

maximum density (dwelling unit per gross acre) as depicted on Figure 2 of the Land Use Element of the Comprehensive Plan is not exceeded, if:

1. A Certificate of Concurrency Reservation has been denied for the proposed development pursuant to the requirements of Sec. VII.C.4.c., and an appeal to the Concurrency Review Board has affirmed that decision;
2. The LOS for Drainage Capital Facilities for the development proposed in the application is met pursuant to the requirements of Sec. VII.C.6.d;
3. A plan for development demonstrates how the proposed development will be developed (a) at its entitlement density and (b) at its allowable density under the Palm Beach County Comprehensive Plan and Zoning Code at the time the necessary Public Facilities are available to adequately serve the development. Any development order issued for an Application for Development Permit for which Entitlement Density has been approved shall be consistent with the plans for development in this subsection. The review of a plan for development at the allowable density under this section shall in no way reserve capacity for Public Facilities;
4. Approval of the entitlement density is conditioned on the initiation of development of the proposed project at its allowable density subject to receipt of a Certificate of Concurrency Reservation within two (2) years of the time the necessary Public Facilities are available to serve the proposed development at its allowable density; and
5. In the Urban Service Area, development orders for development proceeding at entitlement densities may be permitted at rural LOS for Potable Water and Sanitary Sewage while the development is at its entitlement density..

E. Appeal. An applicant may appeal any decision of the Planning Director on an Application for Entitlement Density by filing a petition appealing the decision within thirty (30) days to the Concurrency Review Board. In determining whether the Planning Director's decision is in error, the Concurrency Review Board shall apply the standards established in Sec. VIII.D.

IX.

LIBERAL CONSTRUCTION, SEVERABILITY, AND PENALTY PROVISION

D. The provisions of this Ordinance shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, welfare and convenience.

E. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not effect the validity of the remaining portion.

F. A violation of this Ordinance shall be a misdemeanor punishable according to law; however, in addition to or in lieu of any criminal prosecution, Palm Beach County shall have the power to sue in civil court to enforce the provisions of this Ordinance.

X.

EFFECTIVE DATE

G. This Ordinance shall become effective the 1st day of February, 1990, and shall apply to all Applications for Development Permits submitted after that date.

PASSED AND DULY ADOPTED this 30th day of January 1990.

**PALM BEACH COUNTY, FLORIDA by its
BOARD OF COUNTY COMMISSIONERS**

By: Carol E. Cargill
Chair

Attest;

John B. Dunkle, clerk

By: John B. Dunkle
Deputy Clerk

Approved as to form
and legal sufficiency:

By: [Signature]
County Attorney

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, ex-officio Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 1/30/90
DATED at West Palm Beach, FL on 2/8/90
JOHN B. DUNKLE, Clerk.

By: [Signature] D.C.
Deputy Clerk

Palm.Bea\PBC.ZC\Concurre.Fin

Acknowledgement by the Department of State of the State of
Florida, on this, the 5th day of February, 1990.

Acknowledgement from the Department of State received on the
7th day of February, 1990 at 11:29 A.M., and filed in the Office of
the Clerk of the Board of County Commissioners of Palm Beach County, Florida.